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# *The* **BANKING DEPARTMENT NEWSLETTER SUMMER 2005**

[www.nh.gov/banking](http://www.nh.gov/banking)

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## **FROM THE COMMISSIONER'S DESK**

I had intended to write a few words about the end of summer and the change back to business as vacations end and children go back to school. However, there are some events that override our daily or even yearly routine; Hurricane Katrina and its aftermath is one of those events. I am sure that we have all seen the anguish and suffering evident in New Orleans and the rest of the Gulf Coast. Sometimes, I have had to turn off the television because I couldn't stand to see the suffering any longer.

I would like to ask each and every one of you to do something for the survivors of Katrina. We all have different financial situations. But, each of us can help make a difference. The size of the donation is not as important as the act of contributing.

If you are an institution, please consider corporate donations. The American Red Cross and the Salvation Army are but two of the many reputable charities doing yeoman's work in the hurricane ravaged areas. I know of one instance where the proceeds of a community fundraising effort were matched by a local bank. In other instances, donation containers are placed in the institution. Whatever role you can take please consider doing it.

Perhaps we can get back to normal concerns in the next newsletter. But for now, let us help those who can't help themselves.

## **LEGISLATIVE UPDATE**

*Donna M. Soucy, General Counsel*

This year's legislative session was a busy one for the Banking Department. In addition to the three department requested pieces of legislation, the department monitored and followed approximately 59 pieces of legislation. The legislation covered a wide array of topics, including the use of Social Security numbers, privacy, automated answering systems, rulemaking, technical changes to the Uniform Trust Code and reverse mortgages – to name but a few.

Of particular note are the department's three requested pieces of legislation. The first, SB 150 relative to application fees for certain bank incorporations, was signed by the Governor, and became effective on August 14, 2005. The bill changes the filing fees for certain transactions, including conversion between state and national banks; conversion

between mutual savings banks, cooperative banks, building and loan associations, guaranty savings banks, commercial banks, trust companies, and savings and loan associations; and incorporation and management of trust companies. The legislative changes make the fees for these transactions commensurate with the fees currently charged by the Secretary of State to business corporations organized under the provisions of RSA 293-A.

The second department requested bill is SB 209 relative to the licensing of money transmitters and check cashers. This bill, which was retained by the House Commerce Committee for further study, would have given the department regulatory authority over those businesses that transmit money to and from New Hampshire and cash checks for New Hampshire consumers. Currently, New Hampshire is one of only five states that do not regulate this type of business activity.

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The final piece of department requested legislation is SB 223 relative to licensing nondepository mortgage bankers and brokers. This legislation is discussed in great detail in the article titled, Consumer Credit Licensing Improvements.

Legislators will be returning from their summer break some time in early September and begin working in earnest to study and work on retained bills. The department will keep you apprised of further legislative developments.

## **BANKING DIVISION NEWS**

*Charles M. O'Connor – Chief Bank Examiner*

### **Annual Report**

The Annual Report for calendar year 2004 is now available on the department's website.

### **Escrow Rate**

The escrow rate for the period August 1, 2005 through January 31, 2006 is 0.00%.

### **2005 Annual Assessment**

You should have received the 2005 annual assessment invoice. We have modified the form this year to provide you with more information concerning the calculation of each institution's portion of the annual assessment.

### **Funds Availability**

*By Anne J. Rabuck, Staff Attorney*

The Banking Department receives numerous complaints from bank customers and credit union members (hereinafter "customers") who do not fully understand the meaning and implications of the term "funds availability". Many customers are under the mistaken impression that when they are told, "Your funds will be available on Friday.", once Friday arrives, there is no longer any possibility that they will suffer any loss should the check be determined to be counterfeit or defective in other ways including drawn on an account with insufficient funds to cover the amount of the check.

It might be helpful if tellers made a practice of stating to depositors that while the funds will be made available on a particular date, the fact that they are made available does not mean that the funds are no longer subject to the bank or credit union's right to debit the account for the amount now credited should it be determined later that the check is, for example, counterfeit. Reference to the possibility that a check may be counterfeit is widely

understood by customers and may cause them to reconsider any misplaced confidence they may have in the credit worthiness of the maker of their check.

### **Bank Secrecy Act as it Applies to Trust and Private Banking Activities**

*By Christopher D. Blanchette, Bank Examiner IV*

The new BSA/AML Examination Manual was released by FFIEC on June 30, 2005 in an effort to ensure consistent applications of BSA to all types of banking organizations. None of the standards were changed; however, the manual helps to provide clearer guidance on the due diligence required for all types of fiduciary relationships. Specifically, the guidance places significant emphasis on the bank knowing the account powerholders, or the individuals with authority or control of a trust. For example, banks may need to obtain information about the settlor, grantor, trustee, or other persons with the authority to direct the trustee in order to establish the true identity of the customer.

While the majority of traditional trust and asset management accounts may not need enhanced due diligence, management should be aware of situations that may require additional review. Typically, employee benefit and court supervised accounts are among the lower BSA/AML risk accounts; however, management should establish comprehensive documentation, verification, and transaction monitoring procedures for accounts considered to be high risk. Enhanced due diligence may be necessary in the following situations including, but not limited to:

- Account type, size, assets, or transactions atypical for the bank
- Assets or transactions atypical for the type of account or character of the customer
- Account principals or beneficiaries residing in a foreign jurisdiction
- Accounts or relationships in which identities of the principals, beneficiaries, or sources of funds are unknown or cannot be easily determined
- Accounts that benefit charitable organizations or other non-governmental organizations that may be used as a conduit for illegal activities
- Trusts or funding mechanisms established offshore
- Accounts funded with easily transportable assets such as gemstones, precious metals, coins, artwork, rare stamps, or negotiable instruments.

Typically, the following factors should be considered which may warrant an increased risk assessment:

- Account size
- Types and frequency of transactions

- Principals' or beneficiaries' country of residence
- Accounts and transactions that are not usual and customary for the customer or the bank.

More information can be obtained by reviewing Financial Institution Letter 56-2005, which is located at [www.fdic.gov](http://www.fdic.gov).

## Call Report Reminder

Non-depository trust companies and bank trust departments are reminded of the importance of filing on a quarterly basis accurate and timely call reports to the New Hampshire Banking Department. Over the past year, there have been several inaccurate filings that have prompted amendments to be filed. Call reports must be carefully reviewed and completed before submission. Management is encouraged to consult the call report instructions each quarter as updates may apply to the schedules required to be filed. Call reports are utilized during the offsite review of each non-depository trust company and trust department. Information contained in the call reports is also utilized in the development of the scope for each examination, as well as the calculation of the assessment.

Call report forms are available at [www.nh.gov/banking](http://www.nh.gov/banking) and call report instructions are available at [www.ffiec.gov](http://www.ffiec.gov).

## CONSUMER CREDIT DIVISION NEWS

*Mary L. Jurta, Director of Consumer Credit*

### Consumer Credit Licensing Improvements

New Hampshire Senate Bill 223, which becomes effective on September 12, 2005, brings about several efficiencies in the licensing process in New Hampshire. Where there were five (5) separate types of licenses for mortgage business, now there will only be two (2). The five that have been combined were first mortgage banker, first mortgage broker, first mortgage banker/broker, second mortgage broker, and second mortgage home loan lender. From September 12, 2005 on, the Banking Department will issue only two (2) types of mortgage licenses: a mortgage banker license and a mortgage broker license. A person licensed as a mortgage banker may conduct first and second mortgage business in New Hampshire in the capacity of a mortgage lender or a mortgage broker. A person licensed as a mortgage broker may conduct first and second mortgage business in New Hampshire in the capacity of a mortgage broker only.

Companies currently holding any of the five (5) mortgage license types issued prior to September 12, 2005, may

continue to conduct the type(s) of business authorized by that license. Those licenses will expire on December 31, 2005. After September 12th, if a company currently holds a first mortgage license of any type but does not hold a second mortgage license and the company wants to conduct second mortgage business in New Hampshire during 2005, it will need to upgrade its first mortgage license to a new mortgage banker or mortgage broker license by filing a notice and paying a \$250 fee for each location. This procedure is identical to what has been done in the past, except that the company will be issued the new mortgage broker or mortgage banker license rather than a second mortgage broker or second mortgage home loan lender license. When the upgraded license is sent out, it will have an expiration date of December 31, 2005, and we will require the company to return its original 2005 first mortgage license that was issued earlier.

Mortgage companies will apply for renewal of a license for calendar 2006 as either a mortgage broker or a mortgage banker. Those are the only types of mortgage licenses that will be issued for 2006. The fee will be \$500 per location, the amount that would have been paid under the old system for both first mortgage and second mortgage licenses. New renewal forms will be found on our website starting in November. However, there is a further simplification planned: a company will be able to renew its license(s) via the internet by going to our website.

### Electronic Renewals for All Licensees!

This electronic renewal process will be available to all entities licensed by the Consumer Credit Division of the department. **Mortgage bankers and brokers, sales finance companies, retail sellers, mortgage servicers, debt adjusters, and small loan lenders** may electronically renew their licenses for calendar year 2006. The process is scheduled to be available by November 1, 2005. A letter has been sent to each licensed company requesting that they provide us with the name, address, telephone number and e-mail address of the individual we should contact regarding all licensing issues. The individual must be authorized by the company to execute sworn statements and attestations in order to complete the renewal signature requirements. It is to that person that the department will send out the necessary security credentials to allow the company access to the electronic renewal process. It is very, and it is stressed, **very important** that each company provide this information to us at the earliest possible time to allow us time to send out the credentials.

At this time, the renewal process will not allow for any changes to information on file with the department or for the addition of branch offices.

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If a company is adding a new branch for 2006, it will have to submit a paper application, available on our website, as in the past.

If a company changes its address, contact person, branch manager(s), etc., and has not notified the department prior to November 1, 2005, it may be forced to submit a renewal application to the department on paper. In any case, the company must provide written notification on paper to the department of any such changes.

A company can prepare to renew electronically by sending the changes to their information to the department well in advance of November 1st.

The electronic process will entail logging into the system with proper security credentials that will bring up the company's record. The record will display the principal office address of the licensed company and the addresses of any New Hampshire branches currently licensed. There will be boxes to check off next to each location a company wishes to renew for 2006 (the principal office must be renewed in order to renew any NH branches). The authorized user must affix their electronic signature attesting to the accuracy of the information. The appropriate displayed fee for each location must be paid by credit card or indicate that a check will be sent to the department for the license fees. Confirmation(s) of the 2006 license(s) will not be immediate and will not be sent to the company until the information is reviewed, the credit card has been authorized, and/or the check has been processed by the department. In both cases, upon successful completion of the renewal process, the department will mail out the renewed licenses within a few days.

It is important to stress that a company will not be able to change any information online at the time of electronic processing of the renewal applications. To change information, you must submit paper forms to the department. An updating function is being developed and will be available at a future date. By statute, a licensed company is required to update information on an ongoing basis, usually within 30 days of the event that caused the change in information. We hope to make this process easier by allowing companies to go online and electronically enter the changed information. However, presently, the electronic renewal process will not allow for these changes. If you advise us of the changes prior to renewal time, then the information you retrieve electronically will be correct as you view it for renewal and the entire process will go smoothly.

## **Other Changes in Consumer Credit**

Senate Bill 223 wrought other changes applicable to licensed companies regulated by the Consumer Credit Division and companies applying for new licenses.

When a new company now applies to be licensed, unless it is a publicly traded company, a nationwide FBI criminal records check will be conducted for all principals of the company. That will include owners with ten (10) percent or more ownership interest, corporate officers, directors, members, general or limited liability partners, limited partners with ten (10) percent or more ownership interest, trustees, beneficiaries of ten (10) percent or more of the trust that owns the applicant or licensee, senior managers, New Hampshire branch managers, and any person occupying similar status or performing similar functions.

The scope of the mortgage chapter has been modified to coincide with the scope of RESPA. The chapter, RSA 397-A, now provides for the department's regulation of persons that engage in the business of making or brokering mortgage loans secured by real property located in the state of New Hampshire, which is or shall be occupied in whole or in part as a place of residence by the borrower, and which consists of not more than four (4) living units. First and second mortgage loans are covered under NH law and RESPA, as are loans on primary and secondary residences. This clarification should help mortgage licensees when determining numbers and amounts to enter in their New Hampshire Annual Report.

The department now has the ability to conduct examinations at out-of-state principal offices of licensed companies. In some instances, this may prove to be the most efficient method to examine large complex companies whose records are not located in New Hampshire.

Paving the way for electronic licensing, which involves electronic attestations and signatures, SB 223 allows the department to have documents signed pursuant to New Hampshire's "Unsworn Falsification" provision in RSA 641:3. All forms submitted pursuant to an application to the department were notarized in the past. That procedure does not make sense in the electronic world. Therefore, when a person submits an application, renewal, or other form, that previously was notarized, to the department, it must now be signed pursuant to misdemeanor penalties provided under RSA 641:3. That statute provides for penalties if a person 1) makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable or 2) with a purpose to deceive a public servant in the performance of his or her official function, a person makes any written or electronic false statement which he or she does not believe to be true or knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading.



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## **Mortgage Companies - Experience Required**

New companies applying for a mortgage license must demonstrate to the department that at least one person employed full-time in a supervisory capacity at the company's principal office shall have been actively engaged in the mortgage business in a similar supervisory capacity for a minimum of three (3) of the preceding five (5) years. This experience requirement is new, but only one individual in the company is required to have the experience in order to qualify for a license. The requirement does not affect mortgage companies that are currently licensed and whose license is not terminated for any reason. If a company's license is terminated (surrendered, revoked, failed to renew, etc.), the company, upon reapplication, will need to meet the experience requirement.

## **A Word About Filing Deadlines, Fines, and Forgiveness**

*By Celeste J. Couture, Licensing Supervisor*

As your regulatory agency, the department bears the burden of enforcing the statutes and regulations that are put into law by the NH Legislature. When a business is granted a license by the department, it agrees to abide by all applicable statutes and regulations that it is then subject to. By their very nature, laws and regulations lend themselves to being misinterpreted, forgotten, and sometimes even ignored. To address this, penalty provisions came into being. Although by definition, a penalty can be a "punishment," on a more positive note, it can also be a tool to remind us of our obligations and prevent us from repeating the same violations.

The most common penalties that a licensee may find itself subject to are for missing filing deadlines for the documents required to be filed with the department on an annual basis. These documents are the company's annual

report (due on or before February 1 each year), and the company's financial statement (due within 90 days of the company's fiscal year end). Unfortunately, some licensees have been subject to penalties recently or at some point in the past. Some have found that one penalty incurred in the past was just what was needed as a reminder for future filings. There are also some who repeat the same violations.

We want to assure all licensees that we do not enjoy invoking the penalty provisions of our statutes; the penalties are statutory, that is, required by the law. We try to provide everyone with enough information through the instruction sheets that accompany new and renewal licenses, through articles in our newsletters, and by sending reminder letters of upcoming filing deadlines.

With all of the "junk mail" we are all inundated with every day, it is very easy to ignore what may appear to be just another form letter. I would urge everyone, however, to at least quickly scan correspondence sent from the Banking Department, because often times, it is being sent as a reminder to all licensees of an upcoming filing deadline, or subsequently, as a reminder that a filing deadline was missed, a document was not received and that a fine had begun to accrue.

Some other suggestions to prevent licensees from incurring fines are to use a delivery service that can provide a proven date of delivery for whatever document is being filed. Remember, by law the document must be received in the Department on or before the due date – the date of mailing is irrelevant. Assuming that putting a document in the mail in a timely manner will assure its delivery to us on time is blind faith at best, and at worst, a high possibility of a fine.

Our statutes only contemplate forgiveness or reduction of penalties for good cause shown and under exceptional circumstances. By following the suggestions outlined above, our licensees should not find themselves in a position to beg forgiveness.